

Texas Classroom Teachers Association



PO Box 1489 | Austin, Texas 78767
888-879-8282 | 512-477-9415 | Fax: 512-469-9527
tcta.org

Response to House Public Education Committee Request for Information Regarding Interim Charge 1A – Commissioner Authority

Submission from:
Holly Eaton
On behalf of the Texas Classroom Teachers Association
P. O. Box 1489
Austin, TX 78767
heaton@tcta.org
512-477-9415

TCTA has witnessed a number of occasions in which, during the exercise of rulemaking, the Commissioner has exceeded his authority. Additionally, TCTA is aware of occasions in which the Commissioner has issued statements of general applicability – i.e., an administrative rule - which were promulgated by the Commissioner without legal authority and without going through the required rule-making process.

For purposes of this interim charge, we will give a few brief examples from prior years and one specifically related to HB 3.

Teacher appraisal

In 2016, TEA released finally-adopted Commissioner rules regarding educator appraisal, in which the Commissioner defined the criteria which must be used by local school districts in their locally-developed teacher appraisal systems. TCTA objected and filed a lawsuit, arguing that the Commissioner exceeded his authority by dictating specific criteria that local school districts must use in developing their own appraisal systems. Specifically, by prescribing how “the performance of teachers’ students” must be defined in a locally adopted appraisal instrument, the Commissioner exercised rulemaking authority over statutory provisions in which he had no rulemaking authority (TEC Section 21.352).

Other statewide teacher groups also filed lawsuits citing additional concerns, and at the request of the court, the groups combined their claims for purposes of negotiations with the state moving forward. A settlement agreement was reached between all parties in 2017, but the agreement did not cover TCTA’s assertion that the Commissioner exceeded his authority by dictating specific criteria that local school districts must use in developing their own appraisal systems.

High-quality prekindergarten programs

The Legislature adopted Subchapter E-1 of TEC Chapter 29 in 2015, establishing a High Quality Prekindergarten Grant Program, under which the Commissioner was given authority to adopt rules to implement the subchapter. The Commissioner adopted rules implementing Subchapter E-1 in

2016. Subsequently, in 2017, the Legislature adopted Rider 78, which required that the Commissioner ensure that school districts and charter schools receiving formula funding for prekindergarten programs use not less than 15% of the entitlement to implement prekindergarten consistent with the requirements of a high-quality prekindergarten program (established in TEC Sections 29.167-29.171).

One of the provisions in Subchapter E-1, Section 29.167, requires each teacher for a prekindergarten class to be certified under Subchapter B, Chapter 21 and hold additional qualifications. Likewise, the Commissioner rules require each teacher of record ***in a high-quality prekindergarten program to be certified*** under the TEC, Chapter 21, Subchapter B, and hold additional qualifications. <http://ritter.tea.state.tx.us/rules/tac/chapter102/ch102aa.html>.

However, the Commissioner's interpretation of Subchapter E-1, as demonstrated in TEA's High-Quality Prekindergarten FAQs, was that teacher qualification requirements applied to ***all*** prekindergarten teachers (not just those in high-quality prekindergarten programs), and that ***all*** prekindergarten teachers must be ***appropriately*** certified to teach ***prekindergarten***.

This interpretation imposed a hardship on school districts and educators, due to Subchapter E-1's requirements that teachers in high-quality prekindergarten programs must not only be certified, but meet additional criteria (which many prekindergarten teachers did not meet at the time). It also imposed a hardship on teachers assigned to prekindergarten programs, who, although certified, did not hold certification to teach prekindergarten.

Local Teacher Designation Systems/Teacher Incentive Allotment

A recent example of the Commissioner issuing statements of general applicability without going through the rulemaking process is in connection with the Teacher Incentive Allotment/Local Teacher Designation Systems. Long before TEA proposed rules on the TIA, it published a number of system approval rubrics, readiness checklists, and performance standards that gave direction to school districts regarding implementation of local teacher designation systems, TEA approval of such systems, and standards which would have to be met in order to obtain approval. (See links below.)

None of these were subject to the rulemaking process. When finally proposing rules for TIA, TEA attempted to reference these guidance documents in the proposed rules.

Specific examples include a proposed rule which provided that "If TEA determines that an application does not meet *the standards established under TEC, §21.3521*, and this section, TEA may permit the applicant to resubmit the application within three months of the original submission. If no resubmission is timely made, the application will be denied." (emphasis added).

TCTA pointed out in our comments to the proposed rules that if TEA's intent was to incorporate the system approval rubrics and performance standards that it had previously published in the form of guidance, then clearly the rubrics and standards were meant to be legally binding, yet were not subject to the rulemaking process.

Other examples include a proposed rule which provided that a teacher observation component must contain "a plan for calibration, congruence, and review of teacher observation data..."

TCTA pointed out that these terms were not defined anywhere in the proposed rules and, given that they were terms of art used in TEA's system approval rubrics and readiness checklists, clearly the system approval rubrics and readiness checklists were intended to be legally binding, yet were not subject to the rulemaking process.

A final example includes a proposed rule which provided that an application for local teacher designation system approval must include "data for all teachers in *eligible teaching assignments*, including student growth, and observation data for all teachers in *eligible teaching assignments* for the data capture year." (emphasis added).

TCTA pointed out that the term "eligible teaching assignment" was not defined anywhere in the proposed rules, and it appeared that the term was borrowed from TEA's Teacher Incentive Allotment FAQs which provides that districts can choose to include only certain groups of teachers in its local teacher designation system. Again, if that was the case, the information in the FAQs was meant to be legally binding, yet was not subject to the rulemaking process.

Despite these objections by TCTA, TEA adopted the final rules without making the changes requested by TCTA, noting that "The requirements of the proposed rules are authorized by the Texas Education Code and Texas Government Code, Chapter 2001, Subchapter B."

There are currently proposed rules that include more examples of overreach of the commissioner's authority. Please see TCTA's comments to the committee on Interim Charges 1 (C), (D) and (F) regarding mental health supports in public schools.

TIA memo to administrators:

https://tea.texas.gov/sites/default/files/House-Bill-3-HB-3-Teacher-Incentive-Allotment-Letter-of-Intent_0.pdf

Scoring rubrics:

https://tiatexas.org/wp-content/uploads/2020/06/tia_system_application_scoring_rubric.pdf

Checklists:

https://tea.texas.gov/sites/default/files/readiness_checklist_cohorts_a-b.pdf

https://tea.texas.gov/sites/default/files/readiness_checklist_cohorts_c-d.pdf

Performance standards:

<https://tea.texas.gov/sites/default/files/Student%20Growth%20Performance%20Standards.pdf>

<https://tea.texas.gov/sites/default/files/Teacher%20Observation%20Performance%20Standards.pdf>

Teacher Incentive Allotment FAQs:

https://tea.texas.gov/sites/default/files/tia_faq.pdf